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PATENT
3/12/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: Churchill, et al.
Title: Fire-resistant Material and Method of Manufacture
Serial No.: 09/848,792
Filing Date: May 4, 2001
Examiner: Brian Glessner
Art Unit No.: 3635

Date of Deposit: February 26, 2003.
I certify that the accompanying paper is being deposited with the United States Postal Service as First Class Mail for service under 37 CFR 1.8 and is addressed to the Commissioner for Patents, Washington, DC 20231.

KEN EMANUELSON

Commissioner for Patents
Box Fee Amendment
Washington, D.C. 20231

Sir:

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RESPONSE TO RESTRICTION REQUIREMENT

This Amendment is filed in response to the Restriction Requirement mailed September 26, 2002 and due for reply by October 26, 2002. In view of the following election with traverse, reconsideration and withdrawal of the restriction requirement are respectfully requested.

Applicant has enclosed herewith a check in the amount of \$725.00 for a four-month extension of time. It is believed that no further fees are due at this time. If this is not correct, the Commissioner is hereby authorized to charge any fee required to Deposit Account 07-0153.

RESTRICTION

Claims 1-23 are subject to a restriction requirement under 35 U.S.C. §121. The Action requires a restriction to one of three groups of claims. Applicants hereby provisionally elect Group III, claims 18-23, with traverse.

TRAVERSE

Every requirement to restrict has two aspects: (1) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct, and (2) the reasons for insisting upon restriction therebetween. MPEP § 808. With regard to the first aspect, Applicant respectfully submits that the Office Action failed to provide a reason as to why the species identified in the Office Action are distinct. With regard to the second aspect, the reasons given by the Examiner for insisting upon exercising his authority under 35 U.S.C. § 121 to require restriction must be reasons approved by the Commissioner. The reasons approved by the Commissioner are set out in MPEP § 803: (1) the inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i); and (2) there must be a serious burden on the Examiner if restriction is not required (see MPEP § 803.02, § 806.04(a)-(j), § 808.01(a) and 808.02). The Examiner must provide reasons and/or examples to support his conclusions. MPEP § 803.

For purposes of the initial requirement, a serious burden on the Examiner may be shown, *prima facie*, if the Examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant. MPEP § 803. Applicant respectfully asserts that the Examiner has failed to make a *prima facie* case that

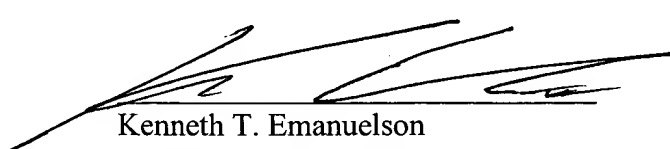
restriction is required. Further, Applicant respectfully submits that the Office Action failed to establish that a serious burden would be imposed on the Examiner if restriction were not required, as the Examiner failed to establish that separate fields of searching would be required. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the restriction/election requirement.

Conclusion

Applicants provisionally elect Group III, claims 18-23 for continued prosecution. For the reasons set forth above, Applicant respectfully requests reconsideration by the Examiner. The application is in condition for allowance, and the Applicant respectfully requests prompt, favorable action thereon. If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below. Please reference Attorney Docket No. 119068-1000.

Respectfully submitted,
GARDERE WYNNE SEWELL, L.L.P.

Dated: 2-26-2003



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